

1 SHEILA SULLIVAN POLK (007514)
2 ELIZABETH ORTIZ (012838)
3 ARIZONA PROSECUTING ATTORNEY'S ADVISORY COUNCIL
4 1951 W. CAMELBACK RD. SUITE 202
5 PHOENIX, ARIZONA 85015
6 TELEPHONE: (602) 542-7222

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF:

R-12-0015

PETITION TO AMEND ARIZONA 12.9(b),
Ariz.R.Crim.P.

ARIZONA PROSECUTING ATTORNEYS'
ADVISORY COUNCIL'S COMMENTS TO
PETITION TO AMEND ARIZONA 12.9(B),
ARIZ.R.CRIM.P.

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") hereby submits comments to
the Petition to Amend 12.9(b), Arizona Rules of Criminal Procedure.

Respectfully submitted this 21st day of May, 2012.

SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY
Chair, ARIZONA PROSECUTING
ATTORNEYS' ADVISORY COUNCIL

ELIZABETH ORTIZ, APAAC
Executive Director



BY: _____
SHEILA SULLIVAN POLK
Chair, APAAC

I. Preface

The Arizona Prosecuting Attorneys' Advisory Council (APAAC) hereby submits its qualified support of R12-0015; Petition to Amend 12.9(b), Arizona Rules of Criminal Procedure. APAAC, a statutory council, is populated by representatives of the various criminal prosecution offices at every level of Arizona government: state, county and municipal. The content of this comment is a consensus of the member organizations. As such it may not include all the observations or concerns that may be held by any single member. Nevertheless, this comprehensive comment should be imputed the weight of the general prosecuting community, which is tasked with promoting justice while ensuring public safety throughout Arizona.

II. General Observations Regarding the Proposed Rule

The Petition seeks to add a deadline for filing a motion for a new finding of probable cause following an appellate remand of a case for a new trial. The impetus for the Petition was a change in the justification statute that was applied retroactively while the case was pending trial. In that very limited and rare situation, a defendant should be entitled to redetermination of probable cause, something the current rule does not allow.

APAAC submits that application of the rule should be limited to only those cases that were reversed because a substantive change in the law makes it apply to the defendant in question. Because this rule is purely procedural, this qualification would ensure that the rule is not applied to cases where an appellate ruling does not affect a previous probable cause finding.

III. Proposed Language

(b) A motion under Rule 12.9(a) may be filed only after an indictment is returned and no later than 25 days after the certified transcript and minutes of the grand jury proceedings have been filed, or 25 days after the arraignment is held, whichever is later. WHEN A REVERSAL

...
...

1 AND REMAND FOR A NEW TRIAL CREATES GROUNDS FOR A MOTION UNDER
2 RULE 12.9(A) THAT DID NOT PREVIOUSLY EXIST, THE RENEWED MOTION MAY
3 BE FILED NO LATER THAN 25 DAYS FROM THE ISSUANCE OF THE MANDATE.

4 **IV. Conclusion**

5 APAAC supports the Petition if, and only if, language is added to limit it in a manner
6 consistent with this comment.

7 Respectfully submitted this 21st day of May, 2012.

8
9 SHEILA SULLIVAN POLK
10 YAVAPAI COUNTY ATTORNEY
11 Chair, ARIZONA PROSECUTING
ATTORNEYS' ADVISORY COUNCIL

12 ELIZABETH ORTIZ, APAAC
13 Executive Director

14 

15
16 BY: _____
17 SHEILA SULLIVAN POLK
18 Chair, APAAC
19
20
21
22
23
24
25
26
27
28